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TARGET CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WENDY D. WHITSON, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

BUMBO, BUMBO LIMITED, BUMBO
(PTY) LTD.; TARGET CORPORATION;
and DOES 1 to 20

Defendants.

Case No.: CV 07-05597 MHP

**ANSWER OF DEFENDANT
TARGET CORPORATION
TO PLAINTIFFS'
COMPLAINT FILED
NOVEMBER 2, 2007;
DEMAND FOR JURY TRIAL**

Complaint Filed: 11/2/07

TO PLAINTIFF WENDY D. WHITSON, ALL OTHER PLAINTIFFS, AND
TO THEIR ATTORNEYS OF RECORD:

Defendant TARGET CORPORATION ("Target") answers the unverified
Class Action Complaint of plaintiff WENDY D. WHITSON ("plaintiff") as follows:

I. NATURE OF ACTION

1. Target denies any involvement in deceptive and unlawful conduct in
designing, manufacturing, marketing, distributing and selling the Bumbo Baby Sitter
as stated in Paragraph 1 of the Complaint. Target lacks sufficient information or

1 belief to admit or deny the alleged defective design of the Bumbo Baby Sitter, the
2 failure of the Bumbo Baby Sitter to perform as intended, or the alleged breach of
3 express and implied warranties for the Bumbo Baby Sitter, and on that basis must
4 therefore deny these allegations as contained in Paragraph 1 of the Complaint.

5 Target denies that it violated any state consumer protection statutes or caused
6 plaintiffs to incur loss of use and monetary damages as stated in Paragraph 1 of the
7 Complaint.

8 2. Target denies that it had knowledge of design problems with the Bumbo
9 Baby Sitter, long resisted recalling the product, and enriched itself at the expense of
10 plaintiffs as alleged in Paragraph 2 of the Complaint. Target lacks sufficient
11 information or belief to admit or deny the alleged defective design of the Bumbo
12 Baby Sitter, and on that basis must therefore deny these allegations as contained in
13 Paragraph 2 of the Complaint.

14 3. Target neither denies nor admits the statements in Paragraph 3 of the
15 Complaint on the grounds that they request relief from the Court and do not contain
16 any substantive allegations as to the underlying action.

17 18 **II. JURISDICTION AND VENUE**

19 4. Target denies the implication that the class should consist of all persons
20 who purchased the Bumbo Baby Sitter during the four year period prior to the filing
21 of the Complaint as alleged in Paragraph 25 of the Complaint on the grounds that
22 this class includes individuals who have not purchased the product from Target,
23 includes individuals with claims beyond the statute of limitations, and is
24 impermissibly broad. Target admits the remaining allegations contained in
25 Paragraph 4 of the Complaint.

26 5. Target admits the allegations contained in Paragraph 5 of the Complaint.

27 6. Except as to potential class members who are citizens of Minnesota,
28 Target admits the allegations contained in Paragraph 6 of the Complaint.

1 7. To the extent some class members were affected in this Judicial District
2 and except as to potential class members who are citizens of Minnesota, Target
3 admits the allegations contained in Paragraph 7 of the Complaint. Target denies the
4 allegation that this Judicial District is the proper venue for a nationwide class action
5 as alleged in Paragraph 7 of the Complaint.

6 8. Target denies the allegation that this Judicial District is the proper venue
7 for a nationwide class action as alleged in Paragraph 7 of the Complaint.

8 9. Target denies that this Court has personal jurisdiction over it as a
9 corporation as alleged in Paragraph 9 of the Complaint.

10 11 **III. PARTIES**

12 10. Target lacks sufficient information to admit or deny the specifics for
13 Ms. Whitson's alleged purchase of a Bumbo Baby Sitter as alleged in Paragraph 10
14 of the Complaint and on that basis denies these allegations. Discovery has not yet
15 occurred and Ms. Whitson has not yet confirmed her citizenship.

16 11. Based on information and belief, Target admits the allegations contained
17 in Paragraph 11 of the Complaint. Discovery has not yet occurred and the Bumbo
18 defendants have not yet confirmed their citizenship.

19 12. Target admits the allegations contained in Paragraph 12 of the
20 Complaint.

21 13. Target lacks sufficient information or belief to admit or deny the
22 allegations contained in Paragraph 13 of the Complaint as they apply to the DOE
23 defendants and on that basis denies those remaining allegations.

24 14. Target denies the allegation that it acted as an agent of each other
25 Defendant as alleged in Paragraph 14 of the Complaint. Target lacks sufficient
26 information or belief to admit or deny the allegations contained in Paragraph 14 of
27 the Complaint as they apply to the DOE defendants and on that basis denies those
28 remaining allegations.

IV. GENERAL ALLEGATIONS

15. Target lacks sufficient information to admit or deny the specifics for the design of the Bumbo Baby Sitter as it applies to all time periods and locations as alleged in Paragraph 15 of the Complaint and on that basis denies these allegations. Target generally admits the allegations contained in Paragraph 15 of the Complaint.

16. Target admits the allegations contained in Paragraph 16 of the Complaint.

17. Target denies the allegation that it entered into an “agency or licensing agreement” with Bumbo as alleged in Paragraph 17 of the Complaint. Target admits selling the Bumbo Baby Sitter in its retail stores and on its website as alleged in Paragraph 17 of the Complaint.

18. Target lacks sufficient information to admit or deny the specifics for the packaging and warnings of the Bumbo Baby Sitter as it applies to all time periods and locations as alleged in Paragraph 18 of the Complaint and on that basis denies these allegations. Target lacks sufficient information or belief to admit or deny the allegations contained in Paragraph 18 of the Complaint as they apply to the legibility, notice, and warning devices on the Bumbo packaging or which are “standard feature of product warning labels” and on that basis denies these allegations

19. Target lacks sufficient information to admit or deny the specifics for the warning stickers of the Bumbo Baby Sitter as it applies to all time periods and locations as alleged in Paragraph 19 of the Complaint and on that basis denies these allegations. Target lacks sufficient information or belief to admit or deny the allegations contained in Paragraph 19 of the Complaint as they apply to the legibility, notice, and other warning devices on the warning sticker and on that basis denies these allegations.

20. Target lacks sufficient information to admit or deny the specifics for the demonstrations of use “inconsistent with the small-fonted warnings” as alleged in Paragraph 20 of the Complaint. Target denies using inconsistent or contradictory

1 marketing in an effort to sell the Bumbo Baby Sitter as alleged in Paragraph 20 of the
2 Complaint.

3 21. Target lacks sufficient information to admit or deny the specifics for the
4 postings on its web site regarding the Bumbo Baby Sitter as it applies to all time
5 periods and locations as alleged in Paragraph 21 of the Complaint. Target admits
6 that it allows consumers to post negative comments regarding products, including the
7 Bumbo Baby Sitter, as alleged in Paragraph 21 of the Complaint.

8 22. Target lacks sufficient information to admit or deny the specifics for the
9 Ms. Whitson's purchase of a Bumbo Baby Sitter as alleged in Paragraph 22 of the
10 Complaint and on that basis denies these allegations.

11 23. Target lacks sufficient information to admit or deny the specifics for the
12 filing of personal injury actions involving infants allegedly injured through their use
13 of a Bumbo Baby Sitter as alleged in Paragraph 23 of the Complaint and on that
14 basis denies these allegations.

15 24. Target denies the allegation that Consumer Product Safety Commission
16 recalled the Bumbo Baby Sitter as alleged in Paragraph 24 of the Complaint. Target
17 notes that the official release from the Office of Information and Public Affairs stated
18 that Bumbo International, of South Africa, was voluntarily recalling the product to
19 include an additional warning regarding use of the product on elevated surfaces.

20 21 **V. CLASS ACTION ALLEGATIONS**

22 25. Target denies the allegation that the certified class should consist of all
23 persons who purchased the Bumbo Baby Sitter during the four year period prior to
24 the filing of the Complaint as alleged in Paragraph 25 of the Complaint on the
25 grounds that this class includes individuals who have not purchased the product from
26 Target, includes individuals with claims beyond the statute of limitations, and is
27 impermissibly broad.

28 26. Target denies the allegation that the certified class should consist of all

1 persons who purchased the Bumbo Baby Sitter during the four year period prior to
2 the filing of the Complaint as alleged in Paragraph 26 of the Complaint on the
3 grounds that this class includes individuals who have not purchased the product from
4 Target, includes individuals with claims beyond the statute of limitations, and is
5 impermissibly broad.

6 27. Target denies the allegation that the Class definitions are unambiguous
7 as alleged in Paragraph 27 of the Complaint. Target lacks sufficient information to
8 admit or deny the specifics for identifying the purchasers of the Bumbo Baby Sitter
9 as it applies to all time periods, other potential retail defendants, and locations as
10 alleged in Paragraph 27 of the Complaint and therefore must deny these allegations.

11 28. Target denies that members of the proposed Class, as defined in the
12 Complaint, have grounds for seeking damages in this action as alleged in Paragraph
13 28 of the Complaint. Target lacks sufficient information to admit or deny the
14 specifics for numerosity of the alleged Class as alleged in Paragraph 28 of the
15 Complaint and therefore must deny these allegations.

16 29. Target denies that common questions of fact and law predominate over
17 the questions affecting individual Class Members as alleged in Paragraph 29 of the
18 Complaint. Target lacks sufficient information to admit or deny this allegations and
19 all lesser included allegations as to the knowledge or actions of other potential
20 Defendants as alleged in Paragraph 29 of the Complaint and its subparts (a) to (j).

21 (a) Target lacks sufficient information to admit or deny the allegation
22 that the Bumbo Baby Sitter was defectively designed and dangerous to use in its
23 normal usage as alleged in Paragraph 29(a) of the Complaint and on that basis denies
24 these allegations.

25 (b) Target lacks sufficient information to admit or deny the allegation
26 that the Bumbo Baby Sitter was defectively designed as alleged in Paragraph 29(b)
27 of the Complaint and on that basis denies the allegation that defendants should have
28 known of the defective design.

1 (c) Target denies that it knowingly concealed any design defects in
2 the Bumbo Baby Sitter as alleged in Paragraph 29© of the Complaint. Target lacks
3 sufficient information to admit or deny the allegation that the Bumbo Baby Sitter was
4 defectively designed as alleged in Paragraph 29© of the Complaint and therefore
5 must deny these allegations.

6 (d) Target denies that it engaged in unlawful business practices by
7 failing to recall or sufficiently repair the defective Bumbo Baby Sitter without
8 causing Class members to incur out-of-pocket costs as alleged in Paragraph 29(d) of
9 the Complaint.

10 (e) Target denies that it refused to recall the Bumbo Baby Sitter in
11 order to increase the future sales of its product as alleged in Paragraph 29(e) of the
12 Complaint. Target lacks sufficient information to admit or deny the allegation that
13 the Bumbo Baby Sitter was defectively designed as alleged in Paragraph 29(e) of the
14 Complaint and therefore must deny these allegations.

15 (f) Target denies that it misrepresented the durability and usefulness
16 of the Bumbo Baby Sitter as alleged in Paragraph 29(f) of the Complaint.

17 (g) Target denies that it violated consumer protection, false
18 advertising statutes, and state deceptive business practices statutes as alleged in
19 Paragraph 29(g) of the Complaint.

20 (h) Target denies that it violated express and implied warranty
21 statutes as alleged in Paragraph 29(h) of the Complaint.

22 (I) Target denies that it violated the principle of unjust enrichment as
23 alleged in Paragraph 29(I) of the Complaint.

24 (j) Target denies that the Class members are entitled to damages or
25 other remedies against Target based on its conduct as alleged in Paragraph 29(j) of
26 the Complaint. Target lacks sufficient information to admit or deny the allegations
27 regarding the nature and extent of damages and other remedies as alleged in
28 Paragraph 29(e) of the Complaint and therefore must deny these allegations.

1 30. Target denies that it engaged in a common course of conduct so as to
2 give rise to the legal rights sought to be enforced by Class members as alleged in
3 Paragraph 30 of the Complaint. Target denies that is violated any statutes or
4 common laws or conducted any deceptive business practices as alleged by Paragraph
5 30 of the Complaint. Target lacks sufficient information to admit or deny the
6 allegation that the Bumbo Baby Sitter was defectively designed as alleged in
7 Paragraph 30 of the Complaint and therefore must deny these allegations.

8 31. Target denies that the alleged Class members suffered any injuries or
9 that the alleged injuries arise from a common nucleus of operative facts as alleged in
10 Paragraph 31 of the Complaint. Target lacks sufficient information to admit or deny
11 the allegation that the Bumbo Baby Sitter was defectively designed as alleged in
12 Paragraph 31 of the Complaint and therefore must deny these allegations.

13 32. Target denies that the alleged Class members have been damaged by its
14 conduct as alleged in Paragraph 32 of the Complaint. Target lacks sufficient
15 information to admit or deny the allegation that the Bumbo Baby Sitter was
16 defectively designed as alleged in Paragraph 32 of the Complaint and therefore must
17 deny these allegations. Target lacks sufficient information to admit or deny the
18 allegation that the Class members would not have purchased the Bumbo Baby Sitter
19 if they knew the truth about the product as alleged in Paragraph 32 of the Complaint
20 and therefore must deny these allegations.

21 33. Target denies that the claims by the named plaintiff, Wendy D. Whitson,
22 are typical of the claims of the other alleged Class members as alleged in Paragraph
23 33 of the Complaint. Target denies that it played any role in the manufacturer of the
24 Bumbo Baby Sitter as alleged in Paragraph 33 of the Complaint. Target lacks
25 sufficient information to admit or deny the allegation that the Bumbo Baby Sitter was
26 prone to permit babies to fall out during normal and foreseeable use as alleged in
27 Paragraph 33 of the Complaint and therefore must deny these allegations.

28 34. Target lacks sufficient information to admit or deny the allegation that

1 the plaintiff, Wendy D. Whitson, and her counsel are without conflict or competent
2 to serve as representatives in this action as alleged in Paragraph 34 of the Complaint
3 and therefore must deny these allegations.

4 35. Target denies that a class action is a superior means to adjudicate this
5 action as alleged in Paragraph 35 of the Complaint.

6 36. Target lacks sufficient information to admit or deny the allegation that
7 individual litigation of Defendants conduct would increase delay and expense for the
8 parties and court system as alleged in Paragraph 36 of the Complaint and therefore
9 must deny these allegations. Target denies that a national class action is appropriate
10 on the basis of similar Class member claims and absence of material differences in
11 state statutes and common law claims as alleged in Paragraph 36 of the Complaint.

12 **VI. CAUSES OF ACTION**

13 **COUNT I**

14 **Violation of State Consumer Protection Laws**

15 37. Target hereby alleges and incorporates by reference Paragraphs 1
16 through 36 of this Answer to the Class Action Complaint.

17 38. Target lacks sufficient information to admit or deny the specifics for
18 Ms. Whitson's alleged purchase of a Bumbo Baby Sitter, or the alleged purchases of
19 potential Class members, as alleged in Paragraph 38 of the Complaint and on that
20 basis denies these allegations. Target lacks sufficient information to admit or deny
21 the allegation regarding the intended use of the product by the Class members as
22 alleged in Paragraph 36 of the Complaint and therefore must deny these allegations.

23 39. Target admits that it had a statutory duty to refrain from unfair and
24 deceptive acts or practices in the sale of the Bumbo Baby Sitter as alleged in
25 Paragraph 39 of the Complaint. Target denies the implication that it undertook any
26 unfair or deceptive practices in the sale of the Bumbo Baby Sitter as alleged in
27 Paragraph 39 of the Complaint.
28

1 40. Target denies that it violated any duty or misrepresented the
2 characteristics, uses, benefits, quality, durability, and usefulness of the Bumbo Baby
3 Sitter as alleged in Paragraph 40 of the Complaint. Target denies that it omitted to
4 disclose any information regarding the usefulness or possible defects of the Bumbo
5 Baby Sitter as alleged in Paragraph 40 of the Complaint. Target lacks sufficient
6 information to admit or deny the allegation that the Bumbo Baby Sitter is susceptible
7 to collapse, tipping and spillage of babies as alleged in Paragraph 36 of the
8 Complaint and therefore must deny these allegations.

9 41. Target denies that its conduct was a direct or proximate cause of injury
10 to plaintiff or the Class members as alleged in Paragraph 41 of the Complaint.
11 Target lacks sufficient information to admit or deny the allegation that the Class
12 members would not have purchased the Bumbo Baby Sitter if they knew the true
13 nature of the product as alleged in Paragraph 41 of the Complaint and therefore must
14 deny these allegations.

15 42. Target denies that it made any deceptive representations or material
16 omissions to plaintiff and the Class members as alleged in Paragraph 42 of the
17 Complaint. Target further denies that it performed any unfair and deceptive acts and
18 practices towards plaintiff the Class members as alleged in Paragraph 42 of the
19 Complaint.

20 43. Target denies that is engaged in wrongful conduct or obtained money
21 from plaintiff or the Class members under false pretenses as alleged in Paragraph 43
22 of the Complaint.

23 44. Target denies that it made misrepresentations to plaintiff or the Class
24 members as alleged in Paragraph 44 of the Complaint.

25 45. Target denies that it made misrepresentations to plaintiff or the Class
26 members as alleged in Paragraph 45 of the Complaint. Target denies that plaintiff or
27 the Class members have suffered ascertainable loss or are entitled to relief based on
28 its actions as alleged in Paragraph 45 of the Complaint.

1 46. Target denies that it made misrepresentations to plaintiff or the Class
2 members as alleged in Paragraph 46 of the Complaint. Target denies that plaintiff or
3 the Class members have suffered ascertainable loss or are entitled to relief based on
4 its actions as alleged in Paragraph 46 of the Complaint. Target denies that its actions
5 constitute unfair competition, unfair acts, or deceptive or fraudulent acts or practices
6 in violation of any of the enumerated state consumer protection statutes as alleged in
7 Paragraphs 46(a) through 46(yy) of the Complaint.

8 47. Target denies that its conduct created artificial demand for Bumbo Baby
9 Sitters or artificially inflated their price so as to cause injury to plaintiff and the Class
10 members as alleged in Paragraph 47 of the Complaint. Target denies that it used
11 unfair methods of competition or unfair or deceptive acts or practices so as to cause
12 injury to plaintiff or the Class members and therefore also denies that plaintiff and
13 the Class members have the right to damages or other recovery based on its conduct
14 as alleged in Paragraph 47 of the Complaint. Target denies that its actions caused
15 injury to plaintiff or the Class members as alleged in Paragraph 47 of the Complaint.

16 17 **COUNT II**

18 **Bread of State Express Warranties**

19 48. Target hereby alleges and incorporates by reference Paragraphs 1
20 through 47 of this Answer to the Class Action Complaint.

21 49. Target admits that it sold the Bumbo Baby Sitter under the belief that it
22 was safe, fit and proper for its intended use as alleged in Paragraph 49 of the
23 Complaint. Target denies the implication that it made express warranties in the sale
24 of the Bumbo Baby Sitter as alleged in Paragraph 49 of the Complaint. Target lacks
25 sufficient information to admit or deny the allegation regarding the implication that
26 the Bumbo Baby Sitter is defective as alleged in Paragraph 49 of the Complaint and
27 therefore must deny these allegations.

28 50. Target denies the implication that it made express warranties in the sale

1 of the Bumbo Baby Sitter as alleged in Paragraph 50 of the Complaint. Target lacks
2 sufficient information to admit or deny the allegation regarding the reliance of
3 plaintiff and the Class members on any other warranties as alleged in Paragraph 50 of
4 the Complaint and therefore must deny these allegations.

5 51. Target admits that it sold the Bumbo Baby Sitter under the belief that it
6 was safe, fit and proper for its intended use as alleged in Paragraph 51 of the
7 Complaint. Target denies the implication that it made express warranties in the sale
8 of the Bumbo Baby Sitter as alleged in Paragraph 51 of the Complaint. Target lacks
9 sufficient information to admit or deny the allegation regarding the implication that
10 the Bumbo Baby Sitter is defective as alleged in Paragraph 51 of the Complaint and
11 therefore must deny these allegations.

12 52. Target lacks sufficient information to admit or deny the allegation
13 regarding the implication that the Bumbo Baby Sitter is not usable for its intended
14 purpose as alleged in Paragraph 52 of the Complaint and therefore must deny these
15 allegations. Target denies the implication that it made express representations in the
16 sale of the Bumbo Baby Sitter as alleged in Paragraph 52 of the Complaint.

17 53. Target denies that it marketed the Bumbo Baby Sitter by means of false
18 and misleading information without regard for their safety and usability as alleged in
19 Paragraph 53 of the Complaint. Target lacks sufficient information to admit or deny
20 the allegation regarding the implication that the Bumbo Baby Sitter is not usable for
21 its intended purpose as alleged in Paragraph 53 of the Complaint and therefore must
22 deny these allegations. Target denies the implication that it made express
23 representations in the sale of the Bumbo Baby Sitter as alleged in Paragraph 53 of the
24 Complaint.

25 54. Target lacks sufficient information to admit or deny the allegation that
26 the Bumbo Baby Sitter is defective as alleged in Paragraph 54 of the Complaint and
27 therefore must deny these allegations. Target denies that it made express warranties
28 for the Bumbo Baby Sitter as alleged in Paragraph 54 of the Complaint. Target

1 denies that it breached any express warranties regarding the design of the Bumbo
2 Baby Sitter as alleged in Paragraph 54 of the Complaint.

3 55. Target denies that it made express warranties for the Bumbo Baby Sitter
4 to the Class members as alleged in Paragraph 55 of the Complaint. Target denies
5 that it breached any express warranties to the Class members regarding the Bumbo
6 Baby Sitter as alleged in Paragraph 55 of the Complaint.

7 56. Target denies that it made express warranties for the Bumbo Baby Sitter
8 to the Class members as alleged in Paragraph 56 of the Complaint. Target denies
9 that it breached any express warranties to the Class members regarding the Bumbo
10 Baby Sitter as alleged in Paragraph 56 of the Complaint. Target denies that its
11 actions violated any express warranties as enumerated in the state statutes relating to
12 this cause of action as alleged in Paragraphs 56(a) through 56(xx) of the Complaint.

13 57. Target denies that its conduct injured plaintiff and the Class members by
14 breaching express warranties and causing them to pay a premium price for the
15 Bumbo Baby Sitter as alleged in Paragraph 57 of the Complaint. Target lacks
16 sufficient information to admit or deny the allegation that the Bumbo Baby Sitter
17 should not have been on the market as alleged in Paragraph 57 of the Complaint and
18 therefore must deny these allegations.

19 58. Target denies that it made any express warranties and further denies
20 breaching any express warranties to plaintiff and the Class members as alleged in
21 Paragraph 58 of the Complaint. Target denies that plaintiff and the Class members
22 have incurred damages as a result of any alleged breach of express warranty as
23 alleged in Paragraph 58 of the Complaint. Target lacks sufficient information to
24 admit or deny the allegation that the Class members would not have purchased the
25 Bumbo Baby Sitter if they knew the truth about the product as alleged in Paragraph
26 58 of the Complaint and therefore must deny these allegations.

27 ///

28 ///

COUNT III

Breach of State Implied Warranties

59. Target hereby alleges and incorporates by reference Paragraphs 1 through 58 of this Answer to the Class Action Complaint.

60. Defendant admits the allegations contained in Paragraph 60 of the Complaint to the extent that the sale of goods included an implied warranty that the Bumbo Baby Sitter was merchantable.

61. Target lacks sufficient information to admit or deny the allegation that the Class members relied upon the expertise, skill, judgment and knowledge of Target and upon the implied warranty that Bumbo Baby Sitters were merchantable and fit for their intended use as alleged in Paragraph 61 of the Complaint and therefore must deny these allegations.

62. Target denies that its conduct has breached the implied warranty of fitness for a particular purpose as alleged in Paragraph 62 of the Complaint. Target lacks sufficient information to admit or deny the allegation that the Bumbo Baby Sitter was not fit for the particular purpose for which it was purchased as alleged in Paragraph 62 of the Complaint and therefore must deny these allegations. Target admits the allegation that it was aware that the Bumbo Baby Sitter was purchased for the purpose of holding infants as contained in Paragraph 62 of the Complaint.

63. Target denies making any misrepresentations to plaintiff and the Class members as alleged in Paragraph 63 of the Complaint. Target further denies that plaintiff and the Class members relied on any misrepresentations by Target in purchasing Bumbo Baby Sitters as alleged in Paragraph 63 of the Complaint.

64. Target lacks sufficient information to admit or deny the allegation that the Class members were influenced in their purchase of Bumbo Baby Sitters by Target's the expertise, skill, judgment and knowledge of Target as alleged in Paragraph 64 of the Complaint and therefore must deny these allegations.

65. Target lacks sufficient information to admit or deny the allegation that

1 the Bumbo Baby Sitter is not of merchantable quality and not fit for its intended use
2 because they are susceptible to collapse, tipping, spilling, and/or failure to contain
3 babies so that they are unsafe to use as alleged in Paragraph 65 of the Complaint and
4 therefore must deny these allegations.

5 66. Target denies that it made implied warranties for the Bumbo Baby Sitter
6 to the Class members as alleged in Paragraph 66 of the Complaint. Target denies
7 that it breached any implied warranties to the Class members regarding the Bumbo
8 Baby Sitter as alleged in Paragraph 66 of the Complaint. Target denies that its
9 actions violated any implied warranties as enumerated in the state statutes relating to
10 this cause of action as alleged in Paragraphs 66(a) through 66(xx) of the Complaint.

11 67. Target denies that its conduct injured plaintiff and the Class members by
12 breaching implied warranties and causing them to pay a premium price for the
13 Bumbo Baby Sitter as alleged in Paragraph 67 of the Complaint. Target lacks
14 sufficient information to admit or deny the allegation that the plaintiff and Class
15 members would not have purchased and/or paid as much for their Bumbo Baby
16 Sitters had they known the truth about the product as alleged in Paragraph 67 of the
17 Complaint and therefore must deny these allegations. Target lacks sufficient
18 information to admit or deny the allegation that the Bumbo Baby Sitter is defective
19 and unsafe to use as implied in Paragraph 67 of the Complaint and therefore must
20 deny these allegations.

21 22 **COUNT IV**

23 **VIOLATION OF STATE UNJUST ENRICHMENT COMMON LAWS**

24 68. Target hereby alleges and incorporates by reference Paragraphs 1
25 through 67 of this Answer to the Class Action Complaint.

26 69. Target denies that it has been unjustly enriched to the detriment of
27 plaintiff and the Class members as a result of unlawful and/or wrongful collection of
28 payments for Bumbo Baby Sitters as alleged in Paragraph 69 of the Complaint.

70. Target denies that it has unjustly benefitted and continues to benefit through the unlawful and/or wrongful collection of payments for Bumbo Baby Sitters at the expense of plaintiff and the Class members as alleged in Paragraph 70 of the Complaint.

71. Target denies that plaintiff and the Class members have grounds to seek restitution from Target as alleged in Paragraph 71 of the Complaint. Target denies that its conduct was unlawful and/or wrongful so as to cause unjust enrichment, benefits, and ill-gotten gains as alleged in Paragraph 72 of the Complaint.

VII. ADDITIONAL OR ALTERNATIVE CAUSES OF ACTION

72. Target admits the allegations contained in Paragraph 72 of the Complaint.

ALTERNATIVE COUNT I

Violations of Unfair Competition Law

(California Business and Professions Code §§17200, et seq.)

73. Target hereby alleges and incorporates by reference Paragraphs 1 through 72 of this Answer to the Class Action Complaint.

74. Target denies that its actions, as stated in the Complaint, constituted unfair, deceptive, and unlawful practices in violation of California's Unfair Competition Law, *Business & Professions Code* §§17200 et seq. as alleged in Paragraph 74 of the Complaint.

75. Target denies that its conduct violated the "fraudulent," "unfair," and "unlawful" prongs of California *Business & Professions Code* §17200 as alleged in Paragraph 75 of the Complaint.

76. Target denies that its conduct was wrongful, or that such wrongful conduct was part of a pattern or generalized course of conduct, as alleged in Paragraph 76 of the Complaint.

ALTERNATIVE COUNT II

Untrue and Misleading Advertising

(California Business And Professions Code §§17500 et seq.)

77. Target hereby alleges and incorporates by reference Paragraphs 1 through 76 of this Answer to the Class Action Complaint.

78. Target admits the allegations contained in Paragraph 78 of the Complaint.

79. Target denies that its advertising constituted unfair competition, unfair, deceptive, untrue, or misleading advertising under California *Business & Professions Code* §§17500 et seq. as alleged in Paragraph 79 of the Complaint. Target denies that its advertisements and practices deceived, or are likely to deceive, the consuming public as alleged in Paragraph 79 of the Complaint.

80. Target denies that its business acts and practices, as alleged in the Complaint, have caused injury to plaintiff, the Class members, and the public as alleged in Paragraph 80 of the Complaint.

81. Target denies that plaintiff and the Class members are entitled to restitution and injunctive relief enjoining Target to cease and desist from engaging in activities described in the Complaint as alleged in Paragraph 81 of the Complaint.

ALTERNATIVE COUNT III

Violations of Consumers Legal Remedies Act

(California Civil Code §§1750 et seq.)

82. Target hereby alleges and incorporates by reference Paragraphs 1 through 81 of this Answer to the Class Action Complaint.

83. Target admits the allegations contained in Paragraph 83 of the Complaint.

84. Target denies that its actions and conduct have violated the Consumer Legal Remedies Act (“CLRA”) as alleged in Paragraph 84 of the Complaint. Target

1 admits that its actions and conduct within the State of California are subject to the
2 laws of the State of California, including the CLRA, as alleged in Paragraph 84 of
3 the Complaint.

4 85. Target denies that the Class members, as defined by the Complaint, are
5 “consumers” under *Civil Code* §1761(d) as alleged in Paragraph 85 of the Complaint
6 on the grounds that the Class potentially includes persons outside of California and
7 outside the statute of limitations for this claim as stated in *Civil Code* §1783.

8 86. Target admits that the Complaint is based on allegations arising from
9 sales of goods for “personal, family or household purposes” within the meaning of
10 *Civil Code* §1761 as contained in Paragraph 86 of the Complaint.

11 87. Target denies that its practices in the marketing and sale of the Bumbo
12 Baby Sitter violated the CLRA as alleged in Paragraph 87 of the Complaint.

13 (a) Target denies that it knowingly misrepresented the character,
14 uses, and benefits of the Bumbo Baby Sitter in violation of Section 1770(a)(5) as
15 alleged in Paragraph 87(a) of the Complaint.

16 (b) Target denies that it knowingly misrepresented the standard and
17 quality of the Bumbo Baby Sitter in violation of Section 1770(a)(7) as alleged in
18 Paragraph 87(b) of the Complaint.

19 (c) Target denies that it has knowingly advertised the Bumbo Baby
20 Sitter with the intent not to sell them as advertised in violation of Section 1770(a)(9)
21 as alleged in Paragraph 87(c) of the Complaint.

22 (d) Target denies that it knowingly misrepresented the legal rights,
23 obligation, or remedies involved in the purchase and sale of the Bumbo Baby Sitter
24 in violation of Section 1770(a)(14) as alleged in Paragraph 87(d) of the Complaint.

25 88. Target denies that it failed to disclose and knowingly concealed the
26 Bumbo Baby Sitter’s defects as alleged in Paragraph 88 of the Complaint. Target
27 lacks sufficient information to admit or deny the allegation that the Bumbo Baby
28 Sitter is defective as alleged in Paragraph 88 of the Complaint and therefore must

1 deny these allegations. Target denies that any failure to disclose or knowing
2 concealment was an omission and concealment of material fact that constituted
3 unfair and/or deceptive business practices in violation of California *Civil Code*
4 §1770(a) as alleged in Paragraph 88 of the Complaint.

5 89. Target denies that its actions have violated Civil Code §1770 as alleged
6 in Paragraph 89 of the Complaint. Target denies that its alleged actions and practices
7 present a continuing threat to members of the public as alleged in Paragraph 89.
8 Target denies that plaintiff and the Class members have grounds to seek an
9 injunction against its actions from this Court as alleged in Paragraph 89 of the
10 Complaint.

11
12 **ALTERNATIVE COUNT IV**

13 **Breach of Express Warranties**

14 **(California Commercial Code §2313)**

15 90. Target hereby alleges and incorporates by reference Paragraphs 1
16 through 89 of this Answer to the Class Action Complaint.

17 91. Target admits that it sold and marketed the Bumbo Baby Sitter as a
18 product designed to hold infants as alleged in Paragraph 91 of the Complaint. Target
19 denies that it or its agents made express warranties or representations regarding the
20 safety of the Bumbo Baby Sitter beyond the information that was provided by the
21 manufacturer as alleged in Paragraph 91 of the Complaint. Target lacks sufficient
22 information to admit or deny the implication that the Bumbo Baby Sitter is defective
23 as alleged in Paragraph 91 of the Complaint and therefore must deny these
24 allegations.

25 92. Target denies that it or its agents made express warranties or
26 representations regarding the safety of the Bumbo Baby Sitter beyond the
27 information that was provided by the manufacturer as alleged in Paragraph 92 of the
28 Complaint. Target lacks sufficient information to admit or deny the allegation that

1 the plaintiff and Class members relied on such representations when purchasing the
2 Bumbo Baby Sitters as alleged in Paragraph 92 of the Complaint and therefore must
3 deny these allegations.

4 93. Target admits that it knew the purpose for which the Bumbo Baby Sitter
5 was intended and warranted that it was effective and proper for that purpose as
6 alleged in Paragraph 93 of the Complaint. Target denies that it or its agents made
7 express warranties or representations regarding the safety of the Bumbo Baby Sitter
8 beyond the information that was provided by the manufacturer as alleged in
9 Paragraph 93 of the Complaint.

10 94. Target denies that it knew or had reason to know that the Baby Bumbo
11 Sitter was neither safe nor useable as alleged in Paragraph 94 of the Complaint.
12 Target denies that it or its agents made express warranties or representations
13 regarding the safety of the Bumbo Baby Sitter beyond the information that was
14 provided by the manufacturer as alleged in Paragraph 94 of the Complaint. Target
15 lacks sufficient information to admit or deny the implication that the Bumbo Baby
16 Sitter is defective as alleged in Paragraph 94 of the Complaint and therefore must
17 deny these allegations.

18 95. Target denies that it or its agents made promises, descriptions or
19 affirmations of fact regarding the safety of the Bumbo Baby Sitter beyond the
20 information that was provided by the manufacturer as alleged in Paragraph 95 of the
21 Complaint. Target lacks sufficient information to admit or deny the implication that
22 the Bumbo Baby Sitter is defective as alleged in Paragraph 95 of the Complaint and
23 therefore must deny these allegations. Target admits that it continues to sell the
24 Bumbo Baby Sitter as alleged in Paragraph 95 of the Complaint. Target denies that it
25 markets the Bumbo Baby Sitter by means of false and misleading information
26 without regard to the product's actual safety and usability as alleged in Paragraph 95
27 of the Complaint.

28 96. Target denies that its actions constitute breach of express warranty in

1 violation of California *Commercial Code* §2313 as alleged in Paragraph 96 of the
2 Complaint.

3 97. Target denies that it has breached or failed to honor any express
4 warranties to plaintiff and the Class members for the Bumbo Baby Sitter as alleged in
5 Paragraph 97 of the Complaint. Target denies that its actions have caused plaintiff
6 and the Class members to incur damages as alleged in Paragraph 97 of the
7 Complaint. Target lacks sufficient information to admit or deny the allegation that
8 the plaintiff and Class members would not have purchased the Bumbo Baby Sitter or
9 paid the sales prices if they had known the truth about the product as alleged in
10 Paragraph 97 of the Complaint and therefore must deny these allegations. Target
11 lacks sufficient information to admit or deny the implication that the Bumbo Baby
12 Sitter is defective as alleged in Paragraph 97 of the Complaint and therefore must
13 deny these allegations.

14
15 **ALTERNATIVE COUNT V**

16 **Breach of Implied Warranties**

17 **(California Commercial Code §2314)**

18 98. Target hereby alleges and incorporates by reference Paragraphs 1
19 through 97 of this Answer to the Class Action Complaint.

20 99. Target admits the allegation that it has sold and marketed the Bumbo
21 Baby Sitter to the public, including plaintiff and the Class members, as contained in
22 Paragraph 99 of the Complaint. Target lacks sufficient information to admit or deny
23 the allegation that the plaintiff and Class members relied upon its skill and judgment
24 in making their purchases of the Bumbo Baby Sitter as alleged in Paragraph 99 of the
25 Complaint and therefore must deny these allegations. Target lacks sufficient
26 information to admit or deny the implication that the Bumbo Baby Sitter is defective
27 as alleged in Paragraph 99 of the Complaint and therefore must deny these
28 allegations.

1 100. Target admits the allegation that it sold and promoted the Bumbo Baby
2 Sitter, placing it in the stream of commerce, as contained in Paragraph 100 of the
3 Complaint. Target admits that it knew the intended use of the Bumbo Baby Sitter
4 and impliedly warranted that the Bumbo Baby Sitter was of merchantable quality and
5 fit for its intended use as contained in Paragraph 100 of the Complaint. Target
6 admits the allegation that the implied warranty included the fact that the Bumbo
7 Baby Sitter was safe for use by babies and would not be subject to collapse and the
8 spilling of babies to the extent that it was used with proper adult supervision and
9 with respect to all warnings and instructions as contained in Paragraph 100 of the
10 Complaint. Target lacks sufficient information to admit or deny the implication that
11 the Bumbo Baby Sitter is defective as alleged in Paragraph 99 of the Complaint and
12 therefore must deny these allegations.

13 101. Target lacks sufficient information to admit or deny the allegation that
14 the plaintiff and Class members relied upon its skill and judgment in making their
15 purchases of the Bumbo Baby Sitter as alleged in Paragraph 101 of the Complaint
16 and therefore must deny these allegations. Target lacks sufficient information to
17 admit or deny the implication that the Bumbo Baby Sitter is defective as alleged in
18 Paragraph 101 of the Complaint and therefore must deny these allegations.

19 102. Target denies that it has breached the implied warranty of fitness for a
20 particular purpose as alleged in Paragraph 102 of the Complaint. Target admits the
21 contention that the Bumbo Baby Sitter was marketed and sold with its intended
22 purpose being to hold babies as contained in Paragraph 102 of the Complaint. Target
23 lacks sufficient information to admit or deny the implication that the Bumbo Baby
24 Sitter is defective as alleged in Paragraph 102 of the Complaint and therefore must
25 deny these allegations.

26 103. Target lacks sufficient information to admit or deny the allegation that
27 the plaintiff and Class members were influenced by its expertise, skill, and judgment
28 in making their purchases of the Bumbo Baby Sitter as alleged in Paragraph 103 of

1 the Complaint and therefore must deny these allegations.

2 104. Target denies that it breached any implied warranty that the Bumbo
3 Baby Sitter was of merchantable quality and fit for its intended use in violation of
4 *Commercial Code* §2314 as alleged in Paragraph 104 of the Complaint.

5 105. Target denies that it breached or failed to honor any implied warranty to
6 plaintiff and the Class members in the purchase of the Bumbo Baby Sitter as alleged
7 in Paragraph 105 of the Complaint. Target denies that its actions have caused
8 plaintiff and the Class members to incur damages as alleged in Paragraph 105 of the
9 Complaint. Target lacks sufficient information to admit or deny the allegation that
10 the plaintiff and Class members would not have purchased the Bumbo Baby Sitter if
11 they had known the truth about the product as alleged in Paragraph 105 of the
12 Complaint and therefore must deny these allegations. Target lacks sufficient
13 information to admit or deny the implication that the Bumbo Baby Sitter is defective
14 as alleged in Paragraph 105 of the Complaint and therefore must deny these
15 allegations.

16 **ALTERNATIVE COUNT VI**

17 **Common Law Unjust Enrichment**

18 106. Target hereby alleges and incorporates by reference Paragraphs 1
19 through 105 of this Answer to the Class Action Complaint.

20 107. Target denies that it has been unjustly enriched or benefitted to the
21 detriment of plaintiff and the Class members as a result of unlawful and/or wrongful
22 collection of payments for the Bumbo Baby Sitter as alleged in Paragraph 107 of the
23 Complaint.

24 108. Target denies that its actions have been unlawful and/or wrongful as
25 alleged in Paragraph 108 of the Complaint. Target denies that it would be unjust for
26 defendants to retain the benefits attained by their actions as alleged in Paragraph 108
27 of the Complaint. Target denies that plaintiff and the Class members have the right
28

1 to seek restitution as alleged in Paragraph 108 of the Complaint. Target lacks
2 sufficient information to admit or deny the implication that the Bumbo Baby Sitter is
3 defective as alleged in Paragraph 108 of the Complaint and therefore must deny these
4 allegations.

5
6
FIRST AFFIRMATIVE DEFENSE

7
8 109. The complaint fails to state a cause of action against defendant Target
9 Corporation.

10
11
SECOND AFFIRMATIVE DEFENSE

12 110. The plaintiffs' cause of action is barred by the doctrine of unclean
13 hands.

14
15
THIRD AFFIRMATIVE DEFENSE

16 111. Plaintiffs have failed to exercise reasonable care and diligence to avoid
17 loss and to minimize the damages, if any, which plaintiffs suffered. Plaintiffs have
18 failed to exercise reasonable efforts on their part or to reasonably have made
19 expenditures which could have prevented the losses which plaintiffs have allegedly
20 suffered.

21
22
FOURTH AFFIRMATIVE DEFENSE

23 112. The damages sustained by plaintiffs, if any, were proximately caused by
24 the acts, omissions, negligence, fraud, and/or breach of obligations by persons other
25 than defendant Target Corporation and beyond defendant's supervision and control.

26
27
FIFTH AFFIRMATIVE DEFENSE

28 113. The causes of action alleged in the Complaint are barred by the

1 applicable statutes of limitations, including, but not limited to the provisions of
2 California *Code of Civil Procedure* §§335.1, 337, 337.1, 337.15, 338(a), 338(b),
3 338(d), 339, 340(3) and/or 343, *Insurance Code* §11580.2(g).

4 5 **SIXTH AFFIRMATIVE DEFENSE**

6 114. The causes of action alleged in the Complaint are barred by the
7 applicable statutes of limitations, including, but not limited to, the provisions of
8 Section 338(4) of the *Code of Civil Procedure*.

9 10 **SEVENTH AFFIRMATIVE DEFENSE**

11 115. The causes of action alleged in the Complaint are barred by the
12 applicable statutes of limitations from other jurisdictions, including, but not limited
13 to, the provisions of *Code of Alabama* §8-19-14, *Alaska Stat. Code* §45.50.531(f),
14 *Ariz. Rev. Stat.* §§44-1522, *Colo Rev. Stat.* §§6-1-115, and *Conn. Gen. Stat.*
15 §42-110g(f),

16 17 **EIGHTH AFFIRMATIVE DEFENSE**

18 116. Plaintiff's action is barred by laches and delay on the part of plaintiff, to
19 the prejudice of defendant Target Corporation.

20 21 **NINTH AFFIRMATIVE DEFENSE**

22 117. Plaintiffs are estopped from asserting any rights which they may have
23 against defendant.

24 25 **TENTH AFFIRMATIVE DEFENSE**

26 118. Plaintiffs knowingly waived, by verbal expressions or conduct, any
27 known rights which they may have had against defendant.

ELEVENTH AFFIRMATIVE DEFENSE

119. Plaintiffs failed to act in good faith in complying with their obligations under the law and their contract with defendant.

TWELFTH AFFIRMATIVE DEFENSE

120. Plaintiffs have failed to act reasonably to minimize any loss or harm that they suffered and could have avoided such harm by making reasonable efforts or expenditures.

THIRTEENTH AFFIRMATIVE DEFENSE

121. Plaintiffs' injury did not result from a use of the product which was reasonably foreseeable by defendant .

FOURTEENTH AFFIRMATIVE DEFENSE

122. At the time of the alleged accident sued on, the product was being misused by plaintiffs in a manner which was not appropriate for its intended purposes. This misuse of the product was without defendant's knowledge, approval, or consent and was contrary to the printed instructions that were delivered to plaintiffs with the product. The use of the product was not reasonably foreseeable to defendant either at or before the time of the sale, or at any time before the time defendant received notice of the accident described in the complaint.

FIFTEENTH AFFIRMATIVE DEFENSE

123. There was no defect in the product at the time that it left the possession of defendant.

SIXTEENTH AFFIRMATIVE DEFENSE

124. Defendant expressly disclaimed any implied warranties by using

1 language which in common understanding called to plaintiffs' attention the exclusion
2 of warranties and made plain that there was no implied warranty.

3
4 **SEVENTEENTH AFFIRMATIVE DEFENSE**

5 125. Plaintiffs did not give defendant notice of a breach of warranty within a
6 reasonable time after they knew or should have known that the product was not fit
7 for its intended purpose.

8
9 **EIGHTEENTH AFFIRMATIVE DEFENSE**

10 126 Plaintiffs have failed to adequately plead the allegations of fraud,
11 misrepresentation, and mistake in that their Complaint does not state with
12 particularity the circumstances constituting fraud or mistake as required under
13 Federal Rule of Civil Procedure 9(b).

14
15 **NINETEENTH AFFIRMATIVE DEFENSE**

16 127. Plaintiffs' claims based on non-disclosure an alleged design defect are
17 barred from application to this case on the grounds that the alleged defect manifested
18 itself after the expiration of the warranty period.

19
20 **TWENTIETH AFFIRMATIVE DEFENSE**

21 128. There were adequate safety warnings and instructions regarding the safe
22 and proper use of the product when it left the possession of defendant.

23
24 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

25 129. Plaintiffs do not have privity of contract with the defendant.

26
27 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

28 130. Plaintiffs have failed to meet the prerequisite conditions for a class

1 action, including, but not limited to the fact that the class is not so numerous that
2 joinder of all members individually would be impractical; there are not common
3 questions of law or fact, to the class; the named plaintiff representing the class does
4 not have claims that are typical of the class generally; and the named plaintiff,
5 representing the class, cannot fairly and adequately protect the interests of all
6 members of the alleged class.

7 8 9 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

10 131. Plaintiffs' alleged claims are barred, in whole or in part, because Target
11 has at all times acted reasonably and in good faith in conformity with and in reliance
12 on the applicable statutory regulations, orders, rulings, approvals, and interpretations
13 on the applicable statutory regulations.

14 15 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

16 132. Plaintiffs' alleged claims are barred, in whole or in part, because none of
17 Target's actions, as alleged by the Complaint and otherwise, were "willful" for
18 purposes of the applicable statutory regulations.

19 20 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

21 133. Plaintiffs' alleged claims are barred because the applicable statutes are
22 unconstitutionally vague and overly broad, and the manner in which plaintiffs allege
23 that they apply to Target constitutes a violation of due process.

24 25 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

26 134. Plaintiffs' causes of action, and the claim for injunctive relief and
27 restitution are barred in light of the fact that the named plaintiff and the Class
28 members have an adequate remedy at law.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

135. Plaintiffs' causes of action, and each of them, are moot and therefore the prayer for injunctive relief is not available.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

136. Plaintiffs' alleged claims are barred because they have failed to alleged a class so numerous that joinder of all members individually is impracticable.

TWENTY-NINTH AFFIRMATIVE DEFENSE

137. Plaintiffs' alleged claims are barred because they do not have commonality as to questions of law or fact common to the proposed class members.

THIRTIETH AFFIRMATIVE DEFENSE

138. Plaintiffs' alleged claims are barred by the principle of typicality because the named plaintiff does not have claims or defenses that are typical of the claims or defenses of the proposed class members.

THIRTY-FIRST AFFIRMATIVE DEFENSE

139. Plaintiffs' alleged claims are barred because the named plaintiff and her counsel of record are unable to fairly and adequately protect the interests of all members of the class.

THIRTY-SECOND AFFIRMATIVE DEFENSE

140. Plaintiffs' alleged claims are barred because the proposed class membership is not be objectively ascertainable.

THIRTY-THIRD AFFIRMATIVE DEFENSE

141. Plaintiffs' alleged claims are barred because they do not have

1 commonality as to questions of law or fact because any alleged commonality of facts
2 would result in differing results under the applicable state laws affecting members of
3 the proposed class.

4
5 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

6 142. Plaintiffs' alleged claims are barred because the named plaintiff does
7 not possess the same interests and injury claims as the proposed class members.

8
9 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

10 143. Plaintiffs' alleged claims are barred because the named plaintiff has not
11 suffered any actual harm.

12
13 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

14 144. Plaintiff's alleged claims are barred because the proposed class
15 definition is not sufficiently definite, making it administratively infeasible to
16 determine whether a particular individual is a class member.

17
18 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

19 145. Plaintiffs' claims based on allegations of fraud and misrepresentation
20 are barred because each class member's claims raises questions as to their state of
21 mind and credibility issues, precluding class treatment.

22
23 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

24 146. Plaintiffs' proposed class action is unmanageable because it arises under
25 state law involving multi-state plaintiffs and variations in state law and defenses, as
26 well as problems in effecting discovery. Plaintiffs' proposed class action is also
27 unmanageable because differences in the statute of limitations in each state will
28 necessitate creating numerous subclasses, resulting in additional manageability

1 concerns.

2
3 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

4 147. Plaintiffs' proposed class action is barred on the grounds that the 14th
5 Amendment Due Process and Full Faith Clauses asserted by nonresident class
6 members will be violated if the Court applies California law. Similarly, plaintiffs'
7 proposed class action is barred on the grounds that the Court cannot apply a liability
8 standard that is an amalgamation of many different states' laws without violating the
9 Erie doctrine.

10
11 **FORTIETH AFFIRMATIVE DEFENSE**

12 148. Plaintiffs' attempt to certify a nationwide class in is barred on the
13 grounds that the Complaint has not provided the extensive analysis of state law
14 variations required to determine whether they provide "insuperable obstacle" to
15 predominance.

16
17 **FORTY-FIRST AFFIRMATIVE DEFENSE**

18 149. Plaintiffs' claims and alleged class action should be transferred and/or
19 coordinated for pretrial proceedings under the multidistrict litigation statute (28
20 U.S.C. §1407) for the convenience of the parties and witnesses, judicial economy,
21 and just and efficient conduct of the actions.

22
23 **FORTY-SECOND AFFIRMATIVE DEFENSE**

24 150. Target does not presently know all of the facts and circumstances
25 surrounding plaintiffs' claims. Target therefore reserves the right to amend this
26 Answer should it later discover facts demonstrating the existence of additional
27 affirmative defenses.

1 WHEREFORE defendant prays that plaintiff take nothing by this action and
2 that defendant be awarded costs and all other just relief.

3
4 Dated: September 4, 2008

MANNING & MARDER
KASS, ELLROD, RAMIREZ LLP

5
6 By: /s/
7 DENNIS B. KASS
EVELINA M. SERAFINI

8 Attorneys for Defendants
9 TARGET CORPORATION

10
11 **DEMAND FOR JURY TRIAL**

12 Defendant hereby demands trial of this matter by jury pursuant to Federal
13 Rules of Civil Procedure, Rule 38(b) and Local Rule 38-1.

14
15 Dated: September 4, 2008

MANNING & MARDER
KASS, ELLROD, RAMIREZ LLP

16
17 By: /s/
18 DENNIS B. KASS
EVELINA M. SERAFINI

19 Attorneys for Defendants
20 TARGET CORPORATION